

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #6	CCRB Case #: 202003119	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/07/2020 2:10 AM	Location of Incident: Euclid Avenue between Sutter Avenue and Belmont Avenue	Precinct: 75	18 Mo. SOL 11/7/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 05/07/2020 12:12 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 05/07/2020 12:12 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Daniel Berardi	00729	948658	075 PCT
2. POM William Schumacher	04618	949640	075 PCT
3. POM Mahmudul Bhuiyan	19636	953682	075 PCT
4. POM John Sikora	22498	953735	075 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Mccurry	20597	958897	075 PCT
2. POM Anthony Waite	09649	961434	067 DET
3. POM Michael Vitale	23951	954409	075 DET

Officer(s)	Allegation	Investigator Recommendation
A.POM John Sikora	Abuse: Police Officer John Sikora stopped the vehicle in which § 87(2)(b) and individuals were occupants.	
B.POM William Schumacher	Abuse: Police Officer William Schumacher searched an individual.	
C.POM Mahmudul Bhuiyan	Abuse: Police Officer Mahmudul Bhuiyan searched an individual.	
D.POM William Schumacher	Abuse: Police Officer William Schumacher frisked an individual.	
E.POM Mahmudul Bhuiyan	Abuse: Police Officer Mahmudul Bhuiyan searched the vehicle in which § 87(2)(b) and individuals were occupants.	
F.SGT Daniel Berardi	Discourtesy: Sergeant Daniel Berardi spoke discourteously to an individual.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)		

Case Summary

On May 7, 2020, § 87(2)(b) an Uber driver, filed this complaint with the CCRB on behalf of himself and his three unidentified Uber passengers through the Call Processing System.

On May 7, 2020, at approximately 2:10 a.m., § 87(2)(b) an Uber driver, picked up three unidentified passengers before being pulled over on Euclid Avenue between Sutter Avenue and Belmont Avenue in Brooklyn by PO John Sikora, Sgt. Daniel Berardi, PO William Schumacher, PO Mahmudul Bhuiyan, PO Michael Vitale, and PO Matthew McCurry of the 75th Precinct (**Allegation A– Abuse of Authority:** § 87(2)(g) PO Schumacher searched an unidentified passenger and PO Bhuiyan searched a second unidentified passenger and frisked a third unidentified passenger (**Allegations B-D – Abuse of Authority:** § 87(2)(g) PO Bhuiyan searched § 87(2)(b)'s car (**Allegation E – Abuse of Authority:** § 87(2)(g) Sgt. Berardi told an unidentified passenger to “shut the fuck up” (**Allegation F – Discourtesy:** § 87(2)(g) PO § 87(2)(g), § 87(4-b)

§ 87(2)(b). No arrests or summonses resulted from this incident.

Seven BWC videos of this incident were obtained and can be found in IAs #281-283, 291-294. A summary of the footage can be found in IA #72 (**Board Review 01**).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer John Sikora stopped the vehicle in which § 87(2)(b) and individuals were occupants.

On May 7, 2020, at approximately 2:10 am, in the vicinity of Euclid Avenue between Sutter Avenue and Belmont Avenue in Brooklyn, § 87(2)(b) an Uber driver, had picked up three black men who seemed to be in their early twenties. After the men entered the Uber car and closed the doors, § 87(2)(b) noticed an unmarked maroon or burgundy Chevy Impala occupied by four plainclothes officers which was coming down Sutter Avenue in the opposite direction of § 87(2)(b)'s car. The officers passed by § 87(2)(b)'s car and then made a U-turn. § 87(2)(b) drove a short distance, stopped at a traffic light, and after it turned green made a left onto Euclid Avenue. The officers activated their turret lights and pulled § 87(2)(b) over. The driver, PO Sikora, asked § 87(2)(b) if he knew why he was being pulled over to which § 87(2)(b) said no. § 87(2)(b) said to PO Sikora that it was probably because of the three young men he had in the back, saying, "I know the deal. I know what's going on." PO Sikora said something about § 87(2)(b) having to come to a complete stop at a stop sign, which § 87(2)(b) was certain he had. § 87(2)(b) said there was no stop sign and, "You know why you stopped me. I know why you stopped me because of these three guys in the back." Then, PO Sikora mentioned that a tail light was out. § 87(2)(b) disputed that his tail light was out. The officers ultimately did not issue § 87(2)(b) a summons for the non-functioning brake light (**Board Review 02**).

PO Vitale's BWC footage, starting at the 00:35 mark of the BWC footage, shows PO Vitale walking up to § 87(2)(b)'s car. § 87(2)(b) is in the driver's seat and the car is on. Both of § 87(2)(b)'s rear red running lights are illuminated, however, § 87(2)(b)'s right brake light is non-functional as indicated by the brighter light on the left side of the vehicle (**Board Review 03**).

PO Sikora did not initially recall this incident. However, after watching the BWC footage, PO Sikora recalled that § 87(2)(b) was stopped for having a non-functioning brake light (**Board Review 04**).

Every motor vehicle manufactured on or after January 1, 1952, except a motorcycle, shall be

equipped with at least two stop lamps, one on each side, each of which shall display a red to amber light visible at least five hundred feet from the rear of the vehicle when the brake of such vehicle is applied New York State Vehicle and Traffic Law, Section 375, 40(b) **(Board Review 05)**.

§ 87(2)(b) alleged that the officers pulled him over after he picked up his passengers, and that PO Sikora told him that he was pulled over for a non-functioning brake light, but that his brake light was functional. PO Vitale's BWC footage shows that although § 87(2)(b)'s rear running lights were operational, his right brake light was non-functioning.

§ 87(2)(b), § 87(2)(g)

Allegation B – Abuse of Authority: Police Officer William Schumacher searched an individual.

Allegation C – Abuse of Authority: Police Officer Mahmudul Bhuiyan searched an individual.

Allegation D – Abuse of Authority: Police Officer Mahmudul Bhuiyan frisked an individual.

Allegation E – Abuse of Authority: Police Officer Mahmudul Bhuiyan searched the vehicle in which § 87(2)(b) and individuals were occupants.

§ 87(2)(b) testified that while PO Sikora was speaking with him, officers ordered the men in the back exit the car. § 87(2)(b) saw the officers pat down the three men who were in the back seat, and was told later by one of the men that an officer had unzipped and entered his jacket pocket. The man did not say whether the officer removed anything from his pocket and § 87(2)(b) did not see anything removed. § 87(2)(b) did not see this search but saw the pat downs through his rear-view mirrors, during which the officers ran their hands over the men's pants and jacket and hoodie pockets. An officer then asked § 87(2)(b) to step out of the vehicle, but the officers did not frisk or search § 87(2)(b). As § 87(2)(b) was out of the car he saw PO Bhuiyan enter the back-seat area and front passenger seat. PO Bhuiyan then walked around the car to the driver's door and searched under the driver's seat. § 87(2)(b) did not see PO Bhuiyan open any compartments and PO Bhuiyan did not enter the trunk. § 87(2)(b) told the officers that they were conducting an illegal search and asked why they were searching the car if his taillight was broken. An officer asked § 87(2)(b) if they found marijuana in his car, if it belongs to him. § 87(2)(b) told the officers that he has never smoked marijuana.

§ 87(2)(b) did not know the identity of any of the passengers and was unable to locate contact information for them as the Uber was ordered by a third party. **(Board Review 02)**.

A subpoena was sent to Uber who identified the caller as § 87(2)(b) **(Board Review 06)**. A call was placed to § 87(2)(b) who stated that she would not provide contact information for the passengers without speaking with them first. During subsequent calls, § 87(2)(b) stated that she had not been able to contact them and refused to provide their names or contact information **(Board Review 07)**.

Sgt. Berardi's BWC footage starting at the 00:28 mark of the timestamp visible at the bottom of the screen, shows that Sgt. Berardi approached the passenger side of § 87(2)(b)'s vehicle. At 00:48, Sgt. Berardi explains to a rear passenger that they are not being stopped, and says, "But you have a little marijuana sticking out of your pocket." The individual's pockets are not visible to the camera. At 2:05 minutes, Sgt. Berardi orders an individual to step out of the car after which the back-passenger door opens and a young black male individual wearing a grey zip-up sweater exits. He stands with his arms outstretched to his sides after which a PO Schumacher frisks and searches his stomach area, seeming to take something out of his front sweater pocket. PO Schumacher then

frisks the male's legs. At 2:49 minutes, the male says, "There's no weapons in there. You can feel that it's marijuana." PO Schumacher responds, "Okay, that's what I'm searching for." At 04:00, the individual tells Sgt. Berardi that he respects the officers' jobs but he feels like the officers are violating him. Sgt. Berardi asks the individual if he has marijuana on him and the individual responds affirmatively. Sgt. Berardi responds that they were just making sure that they do not have more marijuana **(Board Review 08)**.

PO Bhuiyan's BWC footage, starting at the 04:14 mark of the timestamp visible at the bottom of the screen, shows that PO Bhuiyan opens the rear left passenger door and orders the unidentified individual, who is a black male wearing a black sweater and black sweat pants, to step out of the car. After the individual exits, PO Bhuiyan frisks his right pants pocket and then places his hand into the pocket while asking, "Is that weed?" PO Bhuiyan slides an item halfway out and then places it back in the pocket. PO Bhuiyan then frisks the individual's legs and orders him to step to the back of the car. At 04:45, PO Bhuiyan orders the rear middle passenger, a black male wearing white and grey sweater and blue sweatpants, to step out of the car. PO Bhuiyan then frisks the individual's waists and legs and orders him to step to the back of the car. The BWC does not show PO Bhuiyan entering the second individual's pockets. At 05:35, § 87(2)(b) exits the car from the driver's seat. PO Bhuiyan enters § 87(2)(b)'s car from the rear left passenger door and shines his flashlight on the floor and on the seat. PO Bhuiyan then enters the car from the driver's door and shines his flashlight around the floor and seat. At 06:19, PO Bhuiyan opens the center console but does not remove any items. At 06:49, PO Bhuiyan enters the front passenger seat. The camera view is obscured and it is unclear where PO Bhuiyan searches. At 07:06, PO Bhuiyan concludes the search **(Board Review 09)**.

PO Vitali BWC footage, starting at the 05:10 mark of the timestamp visible at the bottom of the screen, shows that Sgt. Berardi asked one of the individuals, "Didn't you have weed hanging out of your pocket when we walked up to the car?" The individual responds, "What am I supposed to hide it?" **(Board Review 03)**.

Sgt. Berardi's statement was consistent with his BWC footage. He testified that after stopping § 87(2)(b)'s vehicle for a VTL violation, immediately upon approaching the vehicle, that he observed marijuana in plain view on one of the rear passengers. The officers asked the occupants to exit the car and then searched them and the car for additional marijuana **(Board Review 10)**.

PO Schumacher testified that he did not have an independent recollection of this incident. After reviewing the BWC footage, he acknowledged that the video showed him searching one of the rear passengers, and testified that based on the video, he believed that he did so because of a presence of marijuana **(Board Review 11)**.

PO Bhuiyan's statement was consistent with his BWC footage. He testified that upon approaching the vehicle he smelled a strong odor of marijuana. PO Bhuiyan did not see any marijuana, but the odor was strong which led PO Bhuiyan to believe that it was recently lit, though PO Bhuiyan acknowledged that it was difficult for him to discern lit versus unlit marijuana. The officers asked the occupants to step out of the car because of the marijuana odor. PO Bhuiyan frisked and or searched two of the three rear seat passengers, though he could not recall specifically who or where he frisked or searched. PO Bhuiyan felt an item on one of the individuals and asked if it was weed, to which the individual replied affirmatively. Once the individuals were out of the car he continued to smell marijuana in the car, so he conducted a search of the cabin for additional marijuana **(Board Review 13)**.

The smell of marijuana is sufficient to provide officers with probable cause to search a vehicle and

its occupants. People v. Chestnut, 43 A.D.2d 260 (1974) (**Board Review 13**).

§ 87(2)(b) testified that the officers frisked and searched his three passengers and that they searched his car. The passengers were unavailable to the investigation. The BWC footage shows that PO Schumacher searched the right rear passenger, and PO Bhuiyan searched the rear left and middle passengers and the car. The officers acknowledged conducting the searches, and testified that they did so because of the presence of marijuana in the vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

Allegation F – Discourtesy: Sergeant Daniel Berardi spoke discourteously to an individual.

§ 87(2)(b) testified that the officers let them go without issuing any summonses or making any arrests. As one of the passengers was getting back into § 87(2)(b)'s car, he expressed to the officers that he was upset with the stop. Sgt. Berardi said to the individual, "Shut the fuck up" (**Board Review 02**).

§ 87(2)(b)'s passengers were unavailable to the investigation (See Allegations C-F above).

None of the BWC footage captures Sgt. Berardi making the statement (**Board Review 01**). However, the BWC footage ends at the conclusion of the stop, but the officers are not yet back in their vehicles.

Sgt. Berardi denied making the statement (**Board Review 10**).

PO Schumacher, PO Bhuiyan, and PO Sikora testified that he did not hear Sgt. Berardi make the statement (**Board Review 11, 12, 04**).

§ 87(2)(b) testified that Sgt. Berardi told one of the passengers, "Shut the fuck up." The passengers remain unidentified and were unavailable to the investigation. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 15**).
- PO Sikora has been a member-of-service for eight years and has been a subject in ten additional CCRB complaints and 23 allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Berardi has been a member-of-service for 11 years and has been a subject in nine additional CCRB complaints and 26 allegations, none of which were substantiated. § 87(2)(g)
 - In CCRB cases 202002901, 202004567, 202006932, 202100330 it was alleged that Sgt. Berardi failed to provide a business card to complainants.
- PO Schumacher has been a member-of-service for 11 years and has been a subject in ten additional CCRB complaints and 50 allegations, 13 of which were substantiated. § 87(2)(g)
 - Case 201204235 involved substantiated allegations of Force – Physical Force and Abuse – Premises entered and/or searched. The Board assigned charges and PO Schumacher was found not guilty at trial.
 - Case 201506191 involved a substantiated allegation of Discourtesy – Word. The Board recommended command level instructions and the NYPD imposed no discipline.
 - Case 201907678 involved four substantiated allegations of Abuse – Failure to provide RTKA card and one allegation of Abuse – Interference with Recording. The Board assigned charges and the case is pending.
 - Case 201907678 involved four substantiated allegations of Offensive Language – Gender and one substantiated allegation of Untruthful Statement – False Official Statement. The board assigned charges and the case is pending.
 - Case 201907780 involved one substantiated allegation of Discourtesy – Action. The board recommended Command Discipline A and the NYPD imposed Command Discipline A.
- PO Bhuiyan has been a member-of-service for eight years and has been a subject in nine additional CCRB complaints and 36 allegations, four of which were substantiated. § 87(2)(g)
 - Case 201907780 involved one substantiated allegation of Abuse – Failure to provide RTKA card, one substantiated allegation of Abuse – Stop, and two substantiated allegations of Abuse - Frisk. The board recommended charges and the case is pending.
 - In CCRB cases 201907780, 202004567, 202100648m, it was alleged that PO Bhuiyan dialed to provide a business card to the complainants.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of December 10, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 16**).
- § 87(2)(b)

Squad No.: 06

Investigator: Inv. Thomas Juliano Inv. Thomas Juliano 12/23/2021
Signature Print Title & Name Date

Squad Leader: __Jessica Peña IM Jessica Peña 1/3/2022
Signature Print Title & Name Date